

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition for Declaratory Ruling that AT&T's	)	
Phone to Phone IP Telephony Services Are	)	WC Docket No. 02-361
Exempt from Access Charges	)	
	)	

**COMMENTS OF SOUTHEASTERN SERVICES, INC.**

**1. INTRODUCTION AND BACKGROUND**

Pursuant to the Federal Communications Commission's ("FCC's" or "Commission's") Public Notice (DA 02-3184) issued on November 18, 2002, inviting comments on AT&T Corp.'s ("AT&T") Petition for Declaratory Ruling ("Petition") filed October 18, 2002, Southeastern Services, Inc. ("SSI") hereby submits the following comments.

AT&T's Petition requested the Commission to declare that its phone-to-phone IP telephony services are exempt from access charges. SSI is an enhanced and information service provider ("ISP") providing phone-to-phone IP telephony in the State of Florida, with its principal place of business in Macclenny, Florida. SSI is also certificated by the Florida Public Service Commission as an Alternative Local Exchange Company ("ALEC") and is, in fact, providing alternative local telecommunications services. SSI is also certificated by the Florida Public Service Commission as an Interexchange Company ("IXC"), however SSI is not providing circuit-switched long distance services.

SSI fully supports the positions and arguments asserted by AT&T in its Petition and urges the Commission to expeditiously grant AT&T's Petition.

## 2. THERE IS AN URGENT NEED FOR THE FCC TO ADDRESS THESE ISSUES

There is an urgent need for the FCC to address the issues presented by AT&T in its Petition. This urgent need exists because there are many other very small ISPs, in addition to AT&T, providing VOIP telephony services that are being seriously affected by the confusion that exists at the state level as to whether ILECs can lawfully impose access charges.

This confusion is critically affecting SSI's business operations right now. SSI is currently involved in a billing dispute with a rural ILEC in Florida, Northeast Florida Telephone Company ("NEFCOM"). NEFCOM is taking the position that SSI is purchasing Feature Group A access under its General Services Tariff to provide SSI's phone-to-phone IP telephony services. NEFCOM has recently sent a bill to SSI attempting to backbill SSI to January 2001 for access charges totaling almost *three-quarters of a million dollars*. For a small ISP in this industry, this amount of money is catastrophic, especially when being demanded by an incumbent local exchange company, who holds the capacity to turn off service to the ISP and thus, to outright destroy the ISP's operation. If NEFCOM is not precluded from this imposition of access charges, SSI will effectively be put out of business. SSI will not be able to pay the aggregated access charges NEFCOM alleges it is owed and, almost as significantly, SSI cannot afford to continue in a state of total uncertainty over its business future in the VOIP telephony industry.

SSI has recently filed an informal complaint with the Florida Public Service Commission to address this issue. At its Agenda Conference on December 17, 2002, the Florida Public Service Commission denied a petition for a declaratory statement by another ISP providing phone-to-phone IP telephony in the State of Florida. The Florida Public Service Commission also refused to open a generic proceeding to address these issues as recommended by the Staff of the Commission. The Florida Public Service Commission's actions did not clarify the regulatory or economic situation for SSI or other providers of VOIP telephony in any way. Instead, by denying the petition for a declaratory statement that it was not a telecommunications company, and by warning the ISP that it was risking being later determined to be unlawfully operating without a certificate, the Florida Public Service Commission has sent an ambiguous message to all concerned. ILECs may interpret these actions to approve their pursuit of access charges from ISPs. These actions by the Florida Public Service Commission create an even more unsettled climate for providers of phone-to-phone IP telephony in the State of Florida.

This development makes it even more crucial for the FCC to act quickly to enter a declaratory ruling that: 1) voice over Internet protocol ("VOIP") services carried over the Internet are entitled to subscribe to local services from ILECs; 2) that VOIP service providers are exempt from any requirement that they subscribe to access services or pay above-cost access charges for such services; and 3) that all other phone-to-phone IP and VOIP telephony services are exempt from access charges unless the FCC adopts regulations that provide otherwise on a prospective basis.

3. ISPS' PROVISION OF PHONE-TO-PHONE IP TELEPHONY IS IN DIRECT FURTHERANCE OF THE GOALS OF THE TELECOMMUNICATIONS ACT OF 1996 AND SMALL ISPS CANNOT SURVIVE IF THE FCC DOES NOT ACT EXPEDITIOUSLY

The imposition of access charges by ILECs such as NEFCOM on phone-to-phone IP telephony services provided by ISPs such as SSI is contrary to the stated goals of the Telecommunications Act of 1996. The Telecommunications Act of 1996 was intended to encourage the development of new telecommunications technologies and information services, such as phone-to-phone IP telephony. As stated by AT&T, the FCC has provided an exemption from access charges for ISPs for the very purpose of protecting the development of nascent technologies and new and innovative services. The services provided by SSI are new and innovative and are provided over the public Internet. If the FCC intends that such services continue to be provided by a competitive, flourishing industry, the FCC must act soon to assure that this will be possible.

Respectfully submitted,

[electronically filed]

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